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| <b>Subject:</b>                       | Review of the Constitution   |                                       | <b>Status:</b>                             | For Publication   |  |
| <b>Report to:</b>                     | Governance Working Group<br>Council  |                                       | <b>Date:</b>                               | 3 <sup>rd</sup> July 2014<br>16 <sup>th</sup> July 2014 |  |
| <b>Report of:</b>                     | Director of Business   |                                       | <b>Portfolio Holder:</b>                   | Customers, Legal and Licensing                          |  |
| <b>Key Decision:</b>                  | No - reserved for Council  | Forward Plan <input type="checkbox"/> | General Exception <input type="checkbox"/> | Special Urgency <input type="checkbox"/>                |  |
| <b>Equality Impact Assessment:</b>    | Required:  | No                                    | Attached:                                  | No  |  |
| <b>Biodiversity Impact Assessment</b> | Required:  | No                                    | Attached:                                  | No  |  |
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|            |  |
|------------|--|
| <b>1.</b>  | <b>RECOMMENDATIONS</b>   |
|            | That Council agrees the following amendments to the Constitution:  |
| <b>1.1</b> | <b>Employment Procedure Rules:</b> Members are asked to approve the proposed amendments to the Employment Procedure Rules as detailed in Appendix 1. |

## 2. PURPOSE OF REPORT

2.1 To consider changes to the Constitution as detailed in Appendix 1 and at section 5.

## 3. CORPORATE PRIORITIES

3.1 The matters discussed in this report impact directly on the following of the Council's corporate priorities:

- Responsive Value for Money Services: This priority is about the Council working collaboratively, being a provider, procurer and a commissioner of services that are efficient and that meet the needs of local people.

## 4. RISK ASSESSMENT IMPLICATIONS

4.1 All the issues raised and the recommendation in this report involve risk considerations as set out below:

- Failure to maintain and follow an up-to-date Constitution risks legal proceedings being taken against the Council, and risks members of the community being dissatisfied with the action of the Council.

## 5. BACKGROUND AND OPTIONS

5.1 **Employment Procedure Rules:** This section of the Constitution has been reviewed to provide clarity and more straight forward guidance in relation to the Employment Procedure Rules.

The Employment Procedure Rules details the Council's recruitment and appointment process in addition to the employment processes for the Head of Paid Service and Chief Officers (Chief Finance Officer Section 151 and Monitoring Officer).

In relation to the employment of Head of Paid Service and Chief Officers, the Council needs to comply with the Local Authorities (Standing Orders) (England) Regulations 2001 and The National Salary Framework and Conditions of Service of Local Authority Chief Executives

(revised edition September 2009). The proposed amendments are in line with this legislation and guidance.

Please note the recommendations of the Governance Working Group at 8.2.

**COMMENTS FROM STATUTORY OFFICERS:**

**6. SECTION 151 OFFICER**

6.1 There are no material financial implications arising from the report.

**7. MONITORING OFFICER**

7.1 All legal implications are commented upon in the body of the report.

**8. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT**

8.1 Consultation with Statutory Officers, Legal Officers, Council, Governance Working Group and Committee and Member Services.

8.2 The Governance Working Group met 3<sup>rd</sup> July 2014 and recommended the following to Council:

- To approve the proposed amendments to the Employment Procedure Rules as detailed in the appendix.

**9. CONCLUSION**

9.1 The Council is required by law to implement a Constitution and it is in the interests of the Council to regularly review and update the document.

| Background Papers               |  |
|---------------------------------|--|
| Document                        | Place of Inspection  |
| The Constitution of the Council | <a href="http://www.rossendale.gov.uk/constitution">www.rossendale.gov.uk/constitution</a> |

## Part 4 – Pages 199 - 203

### 10. Employment Procedure Rules

#### 1. RECRUITMENT AND APPOINTMENT

##### 1.1 Declarations

- i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are related to the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or an officer of the Council; or of the partner of such persons.
- ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant Directors and Heads of Services ~~(or an Officer-nominated officer by him or her).~~

##### 1.2 Seeking support for appointment.

- i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- ii) Subject to paragraph (iii), no councillor will seek support for any person for any appointment with the Council.
- iii) Nothing in paragraphs (i) and (ii) above will preclude a councillor from giving a written reference for a candidate for submission with an application for appointment provided that councillor has no role in the decision process of recruitment / appointment to that position.

#### 2. Recruitment of Head of Paid Service and Chief Officers

Where the Council proposes to appoint a Head of Paid Service or a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a job description and person specification specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for the job description and person specification to be sent to any person on request.

#### 3. Appointment and dismissal in respect of the Head of Paid Service

- (a) The full Council will approve the appointment or the dismissal of the Head of Paid Service following the recommendation of such an appointment or dismissal by a committee or sub-

committee of the Council. That committee or sub-committee must include at least one member of the Cabinet.

- (b) The full Council may only approve the appointment or dismissal of the Head of Paid Service where no material or well-founded objection has been made by the Leader on behalf of him/herself or another member of the Cabinet.

(Note: The Council will follow the guidance as detailed in the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 2001/3384)).

#### **4. Appointment, dismissal and disciplinary action in respect of Chief Officers**

- (a) A committee or sub-committee of the Council will appoint, dismiss and take disciplinary action in respect of Chief Officers. That committee or sub-committee must include at least one member of the Cabinet.
- (b) The Committee may only approve the appointment or dismissal of a Chief Officer where no material or well-founded objection has been made by the Leader on behalf of him/herself or another member of the Cabinet.

(Note: The Council will follow the guidance as detailed in the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 2001/3384)).

#### **5. The Cabinet's powers in respect of appointments and dismissals**

- (a) Before an offer of appointment is made or notice of dismissal is given in respect of:
  - (i) the Head of Paid Service or
  - (ii) a Chief Officer
- (b) the Proper Officer must notify every member of the Cabinet of the name of the person who it is proposed should be appointed or dismissed. Each member of the Cabinet must also be notified of any other details relevant to the appointment or dismissal, which the committee has notified to the Proper Officer and of the date and time by which the Leader must make any objection on behalf of the Cabinet.
- (c) Before the date and time for making an objection has passed the Leader must either:
  - (i) notify the Proper Officer that neither he/she nor any member of the Cabinet has an objection to the making of the offer of appointment or giving notice of dismissal; or
  - (ii) notify the Proper Officer that there is such an objection and supply details of it.
- (d) An offer of appointment or notice of dismissal may only be given where Council (in the case of the Head of Paid Service) or the committee (in other cases) is satisfied that no material or well-founded objection has been made by the Leader on behalf of himself/herself or another member of the Cabinet.

The "Proper Officer" for the purposes of paragraph 5 will be the HR Manager. The "committee" for the purposes of paragraphs 3, 4 and 5 will be the Appointments and Appeals Panel.

#### **6. Other appointments, dismissals and disciplinary action**

- (a) **Other officers**

Appointment, dismissals and disciplinary action in respect of all other officers is the responsibility of the Head of Paid Service or his/her nominee. Councillors may not make such decisions.

**7. Additional provisions in respect of disciplinary action affecting the Head of Paid Service and Chief Officers (Chief Finance Officer (S151), and Monitoring Officer)**

**(a) Suspension.**

The Head of Paid Service, Monitoring Officer and Chief Finance Officer (S151) may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. Suspension is a neutral act.

**(b) Independent person.**

No other action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person (as required by the Local Authorities (Standing Orders) (England) Regulations 2001).

**8. Procedures**

The Council will maintain procedures in respect of staff appointments and dismissals and in respect of grievances.

~~**2. RECRUITMENT OF HEAD OF PAID SERVICE AND DIRECTORS AND HEADS OF SERVICE**~~

~~Where the Council proposes to appoint a Directors and Heads of Services and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:~~

~~a) draw up a statement specifying:~~

~~i) the duties of the officer concerned; and~~

~~ii) any qualifications or qualities to be sought in the person to be appointed;~~

~~b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and~~

~~c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.~~

~~**3. APPOINTMENT OF HEAD OF PAID SERVICE**~~

~~3.1 The Full Council must approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a Committee or Sub-committee of the Council before an offer of appointment is made to him/her. That Committee or Sub-committee must include at least one Member of the Cabinet.~~

~~3.2 An offer of employment as Head of Paid Service shall only be made where the procedure set out in Appendix 1 to the Officer Employment Procedure Rules has been completed.~~

~~**4. APPOINTMENT TO DIRECTORS POSTS**~~

~~4.1 The Full Council has decided to reserve to itself the approval of the appointment of the Directors following the recommendation of such an appointment by a Committee or Sub-committee of the Council before an offer of appointment is made to him/her. That Committee or Sub-committee must include at least one Member of the Cabinet.~~

~~4.2 An offer of employment as a Directors or an Officer paid on Directors grades shall only be made where the procedure set out in Appendix 1 to the Officer Employment Procedure Rules has been completed.~~

## ~~5. OTHER APPOINTMENTS~~

~~5.1 Heads of Service and Officers below:~~

~~Appointment of Heads of Service and Officers below Directors is the responsibility of the Head of Paid Service or his or her nominee, and may not be made by Councillors.~~

## ~~6. DISCIPLINARY ACTION~~

~~6.1 Suspension of Head of Paid Service, Chief Finance Officer, and Monitoring Officer.~~

~~The Head of Paid Service, Chief Finance Officer and Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct; any such suspension must terminate no later than the expiry of two months beginning on the day on which the suspension takes effect, unless the designated independent person has directed that it may continue beyond that period.~~

~~6.2 Independent person.~~

~~No other disciplinary action may be taken in respect of the Head of Paid Service, the Chief Finance Officer or Monitoring Officer, except in accordance with a recommendation in a report made by a designated independent person under Regulation 7 of The Local Authorities (Standing Orders) (England) Regulations 2001 SI 2001/ 3384 (investigation of alleged misconduct).~~

~~6.3 Councillors will not be involved in the disciplinary action against any Officer who is not a Directors and Heads of Services or paid on Directors and Heads of Services grades except where such involvement is necessary for any investigation or inquiry into alleged misconduct. However, the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of disciplinary action.~~

## ~~7. DISMISSAL~~

~~7.1 Councillors will not be involved in the dismissal of any Officer who is not a Director or Head of Service or paid on Directors' and Heads of Service grades except where such involvement is necessary for any investigation or inquiry into alleged misconduct. However, the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Members in respect of dismissals.~~

~~7.2 Where a Committee or Sub-Committee of the Council is discharging, on behalf of the Council, the function of or in relation to, the dismissal of the Head of Paid Service, a Directors and Heads of Services or Officer paid on Directors and Heads of Services grades, that Committee or Sub-Committee must include at least one Member of the Cabinet.~~

~~7.3 Head of Paid Service.~~

~~Where a Committee or Sub-Committee of the Council is discharging the function in relation to the dismissal of the Head of Paid Service, the Full Council must approve any recommendation of dismissal before notice of dismissal is given.~~

~~7.4 Notice of dismissal of the Head of Paid Service, a Directors and Heads of Services or Officer paid on Directors and Heads of Services grades must not be given until the procedure set out in Appendix 2 to the Officer Employment Procedure Rules has been completed.~~

## ~~8. DEFINITIONS~~

~~8.1 "Directors and Heads of Service" means Strategic Directors and the Monitoring Officer and Chief Finance Officer.~~

**APPENDIX 1****~~APPOINTMENT OF HEAD OF PAID SERVICE,  
DIRECTORS AND OFFICERS PAID ON DIRECTORS GRADES~~**

- ~~1. This procedure applies to the appointment of the Head of Paid Service, Directors and officers paid on Directors grades (“relevant officers”) and has been incorporated into these Rules, as required by the Local Authorities (Standing Orders)(England) Regulations 2001.~~
- ~~2. In this procedure, “appointor” means, in relation to the appointment of a relevant officer, the committee, sub-committee or panel making the appointment, or, in the case of the appointment of the Head of Paid Service, making a recommendation to the Council.~~
- ~~3. An offer of an appointment as a relevant officer must not be made by the appointor until:~~
  - ~~(a) The appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;~~
  - ~~(b) The proper officer has notified every member of the Cabinet of:~~
    - ~~(i) The name of the person to whom the appointor wishes to make the offer;~~
    - ~~(ii) Any other particulars relevant to the appointment which the appointor has notified to the proper officer, and~~
    - ~~(iii) The period within which any objection in the making of the offer is to be made by the Leader on behalf of the Cabinet to the proper officer; and~~
  - ~~(c) either:~~
    - ~~(i) The Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither s/he nor any member of the Cabinet has any objection to the making of the offer;~~
    - ~~(ii) The proper officer has notified the appointor that no objection was received by him/her within that period from the Leader, or~~
    - ~~(iii) The appointor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.~~
- ~~4. The “proper officer” for the purposes of paragraph 3 will be the HR Manager.~~



**APPENDIX 2****~~DISMISSAL OF HEAD OF PAID SERVICE,  
DIRECTORS AND OFFICERS PAID ON DIRECTORS GRADES~~**

- ~~1. This procedure applies to the dismissal of the Head of Paid Service, Directors and Officers paid on Directors grades (“relevant officers”) and has been incorporated into these Rules, as required by the Local Authorities (Standing Orders)(England) Regulations 2001.~~
- ~~2. In this procedure, “dismissal” means, in relation to the dismissal of a relevant officer, the Council or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the Council, that committee, sub-committee or other officer, as the case may be.~~
- ~~3. Notice of the dismissal of a relevant officer must not be given by the dismissor until:~~
  - ~~- (a) The dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;~~
  - ~~- (b) The proper officer has notified every member of the Cabinet of:~~
    - ~~- (i) The name of the person who the dismissor wishes to dismiss;~~
    - ~~- (ii) Any other particulars relevant to the dismissal which the dismissor has notified to the proper officer, and~~
    - ~~- (iii) The period within which any objection to the dismissal is to be made by the Cabinet leader on behalf of the Cabinet to the proper officer, and~~
  - ~~- (c) either;~~
    - ~~- (i) The Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither s/he nor any other member of the Cabinet has any objection to the dismissal;~~
    - ~~- (ii) the proper officer has notified the dismissor that no objection was received by him/her within that period from the Leader, or~~
    - ~~- (iii) The dismissor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.~~
- ~~4. The “proper officer” for the purposes of paragraph 3 will be the HR Manager.~~